

David L. Mazaroli (DM-3929)  
Attorney for Plaintiff  
11 Park Place – Suite 1214  
New York, NY 10007-2801  
Tel. (212)267-8480  
Fax. (212)732-7352

-----X  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----X

-----X  
MITSUI SUMITOMO INSURANCE CO. LTD. : ECF CASE

Plaintiff, : 07 Civ. 3874 (CM)

- against -

EVERGREEN MARINE CORPORATION; : **AFFIDAVIT OF DAVID L.**  
UNION PACIFIC RAILROAD COMPANY; : **MAZAROLI IN SUPPORT OF**  
 : **PLAINTIFF’S MOTION FOR**  
 : **PARTIAL SUMMARY**  
 : **JUDGMENT**

Defendants.  
-----X

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

David L. Mazaroli, being duly sworn, deposes and says:

1. I am an attorney admitted to practice before this Honorable Court and the attorney of record for plaintiff Mitsui Sumitomo Insurance Co. Ltd. (“Mitsui”). As such I am familiar with the facts, pleadings and procedural history of this litigation.

2. This affidavit is respectfully submitted in support of plaintiff’s motion for partial summary judgment against defendants Union Pacific Railroad Company (“UP”) and Evergreen Marine Corporation (“Evergreen”).

3. Plaintiff has also submitted a memorandum of law, a Rule 56.1 statement, and the declarations of David Clifton and Chikara Yokoi. The purpose of this affidavit is to present copies of the below-referenced exhibits which are referred to in plaintiff’s memorandum of law and Rule 56.1 statement.

4. The Complaint in this action was filed on May 17, 2007. As shown in docket entries no. 6 and 11, respectively, UP's Answer was filed on June 7, 2007 and Evergreen's Amended Answer was filed on June 21, 2007.

5. Annexed hereto as **Exhibit 1** is a copy of the Amended Complaint.

6. Annexed hereto as **Exhibit 2** is a copy of UP's Answer to the Amended Complaint.

7. Annexed hereto as **Exhibit 3** is Evergreen's Answer to the Amended Complaint.

8. Annexed hereto as **Exhibit 4** is a copy of UP's Response to Plaintiff's Request for Admissions.

9. Annexed hereto as **Exhibit 5** is a copy of Evergreen's Response to Plaintiff's Request for Admissions.

10. Annexed hereto as **Exhibit 6** is a copy of UP and Evergreen's Response to Plaintiff's Request for Admissions.

11. Annexed hereto as **Exhibit 7** is a copy of UP and Evergreen's Revised Responses to Plaintiff's Second Request for Admissions.

12. Annexed hereto as **Exhibit 8** is a copy of an excerpt from Evergreen's Supplemental Response to Plaintiff's Request for Production of Documents.

13. Annexed hereto as **Exhibit 9** is a copy of an excerpt from UP's Response to Plaintiff's Request for Documents.

14. Annexed hereto as **Exhibit 10** is a copy of the memo-endorsed letter dated October 23, 2007 informing the Court *inter alia* that UP has (a) assumed the defense of Evergreen and (b) admitted liability to plaintiff.

15. Annexed hereto as **Exhibit 11** are copies of the pages of the transcript of the deposition of UP's Mr. Daniel Hartmann ("Hartmann Dep.") which is referred to in plaintiff's memorandum of law and Rule 56.1 statement. I have in my custody for the Court's review the original transcript and exhibits.

16. Annexed hereto as **Exhibit 12** are copies of the Evergreen Sea Waybill (face sides) for the shipment in suit which were produced in discovery and were marked as Hartmann deposition exhibits 1 and 2.

17. Annexed hereto as **Exhibit 13** is a copy of the document produced in discovery by defendants (Bate's nos. A00158-171) and represented to be the reverse side terms and conditions for the Evergreen sea waybill form. This document was marked as Hartmann deposition exhibit 2B.

18. Annexed hereto as **Exhibit 14** are excerpts of the Master Intermodal Transportation Agreement (MITA-2A) produced by UP in discovery. The pages contained in this exhibit are Bate's numbered 7001 and 7022-70027. A copy of the complete document (7001-7109) was marked as Hartmann deposition exhibit 5.

19. Annexed hereto as **Exhibit 15** are copies of booking documents produced by Evergreen in discovery.

20. Annexed hereto as **Exhibit 16** is a copy of an excerpt from Evergreen's corporate profile document posted on its internet website at <http://www.evergreen-marine.com/tbi1/html/CorporateProfile.pdf>.

Affidavit of David L. Mazaroli  
In Support of Plaintiff's Motion  
For Partial Summary Judgment  
07 Civ 3874(CM)  
Signature and Execution Page

  
David L. Mazaroli

Sworn to before me this  
4<sup>th</sup> day of February 2008

  
Notary Public

JOEL BRAZILLER  
Notary Public, State of New York  
No. 02BR4653562  
Qualified in Kings County  
Commission Expires November 30, 2009